

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

S. F.

v.

NO. 03-38

ROANE COUNTY SCHOOL SYSTEM

FINAL ORDER

Marilyn L. Hudson
Administrative Law Judge
603 Main Street, 6th Floor
P.O. Box 219
Knoxville, TN 37901-0219
(865) 525-7115

September 29, 2003

FINAL ORDER

Case No. 03-38

This cause came before the Tennessee Department of Education, Division of Special Education, upon a Petition For a Due Process Hearing, filed by the grandparents of the student for reimbursement of an independent educational evaluation (IEE).

A hearing was conducted August 18, 2003, at the Roane County Edward E. Lions Educational Building in Kingston, Tennessee, by the undersigned Administrative Law Judge. The grandparents appeared *pro se* and the school was represented by Deborah A. G. Smith. The petitioners presented testimony and documents. The school presented testimony and documents from Deborah Alexander, principal at Kingston Elementary School, and Stephanie S. Walker, the Special Education Supervisor for Roane County Schools.

ISSUE PRESENTED

The parties stipulated at the pre-hearing conference that the sole issue was whether or not the school was required to reimburse the grandparents for an IEE performed February 4, 2002.

FINDINGS OF FACT

The student is enrolled in the Roane County School System at Kingston Elementary School. He has been diagnosed with attention deficit disorder, is identified by the school as “health impaired,” and receives special education services. At the time of the hearing the student was nine years old.

The school referred the student for a routine re-evaluation of special education services. This re-evaluation was conducted over four days: October 19; October 26; November 2; and November 9. The results of this testing are set forth in a psychological evaluation by Vicki Balcom, Ed.S., the school's licensed psychologist. This report notes that the results "are depressed due to his attention deficit," and that the "results should be considered a minimal estimate of true potential."

On November 19, 2001, the school convened a meeting to consider changes in the Individual Education Program (IEP) for the student and to review the re-evaluation test results. The student's grandmother attended. Ms. Balcom also attended and advised that it was very difficult to test the student. She stated that the testing took four sessions and that "she didn't get what she could have out of [the student] because of his off task behaviors." She believed the "results were all below average except in the speaking area."

According to the notes taken at this meeting, the grandmother suggested a computerized test.

The meeting concluded with the school's decision that the student's IEP would not be modified and there would be no change in special education placement. The grandmother disagreed with this result. This disagreement is recorded on the form IEP Changes/IEP Team Notes #25. *See* school's exhibits at tab 10.

The grandparents contracted with the Christian Academy of Knoxville for an independent psycho-educational evaluation of the student, which included re-administering the WISC-III test given by the school in November 2001. The testing was performed over two days, February 4 and 5, 2002, by Jill D. Blankenship, M.A., L.P.E. *See* school's exhibit, tab 7. Ms. Blankenship

has been certified by the State of Tennessee Board of Examiners in Psychology as a Senior Psychological Examiner. *See* grandparent's exhibit, tab 7. Ms. Blankenship compared her test results with the school's November 2001 test results and earlier results of the school's testing. She stated that the student's scores on the February 2002 testing were consistent with those done in pre-school "but not with the most recent evaluation in the fall of 2001."

On April 25, 2002, the school convened another IEP meeting. Ms. Blankenship attended this meeting as did the grandmother and several school officials. As a result of this meeting, special education services for the student were expanded. The student had been receiving resource instruction every school day in 30 minute sessions for a total of 2.5 hours special education. The IEP developed on April 25, 2002, expanded special education services to include math, language and spelling and increased the time allocated for reading. *See* school's exhibit, tab 6. Under the new IEP, the student would receive direct special education services as follows:

Reading - daily instruction at 45 minutes/day
Math - daily instruction at 45 minutes/day
Language - daily instruction at 45 minutes/day
Spelling - daily instruction at 30 minutes/day

See school's exhibit, tab 2.

The grandmother testified that she requested additional testing of the student by letter dated February 1, 2002, to Gary Collins, Director of Schools. That letter was received as evidence at the hearing. *See* grandparent's exhibit, tab 8. The school's witnesses stated that they had not seen the letter. Mr. Collins did not testify at the hearing.

After the IEE was completed, the grandmother sent a second letter to Gary Collins, dated March 1, 2002, advising that she had received no response to her request for additional testing and that she would send the school a copy of the testing she had done. *See* grandparent's exhibit, tab 9.

Following the April 25 IEP, the grandmother corresponded with Mr. Collins again. The letter confirmed that she had asked for reimbursement at the April 25 IEP meeting and made written request for reimbursement of \$550.00, the cost of testing by Ms. Blankenship. *See* grandparent's exhibit, tab 10.

The grandmother wrote to Stephanie Walker by letter dated June 5, 2003, again requesting that she be reimbursed for the cost of the IEE. This letter was sent by certified mail. *See* grandparent's exhibit, tab 11.

Receiving no response from the school, the grandparents initiated this due process hearing.

The school's two witnesses denied ever seeing the letters to Gary Collins, dated February 1 and April 26. No testimony was elicited from these witnesses concerning the March 1 letter to Mr. Collins or the June 5, 2003, letter to Ms. Walker. The school was certainly aware of the IEE, having reviewed it at the April 25, 2002, IEP meeting and discussed it with the examiner Ms. Blankenship.

The school did not object to the credentials of Ms. Blankenship for administering the IEE and conceded that the evaluation was considered at the April 2002 IEP meeting. The school did not object to the cost of the testing.

APPLICABLE LAW

Federal regulations and Tennessee School Board Rules provide procedures under which a parent may be reimbursed for an IEE.

34 CFR 300.502 Independent education evaluation.

- (a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) Each public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
- (3) For the purposes of this part--
- (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and
- (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.
- (b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.
- (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--
- (i) Initiate a hearing under § 300.507 to show that its evaluation is appropriate; or
- (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under § 300.507 that the evaluation obtained by the parent did not meet agency criteria..

Tennessee School Board Rule 0520-0-9-.14(6).

Independent education evaluation (IEE).

- (a) Each local school system shall develop procedures for providing an independent educational evaluation (IEE) at the request of parents. This procedure shall be approved by the Department.
- (b) The parents have the right to an independent educational evaluation (IEE) at public expense if they disagree with the evaluation provided by the local school system. The IEE must be provided at public expense and without unnecessary delay unless the local school system:
1. Initiates a hearing to show its evaluation is appropriate; or
 2. Demonstrates in a due process hearing that the evaluation presented by the parent(s) did not meet the local school system's evaluation criteria. If this is submitted, the

parent(s) still have the right to an IEE, but not at public expense.

- (c) Upon request for an IEE, the local school system shall provide the parents information about where an IEE may be obtained and the evaluation criteria to be used.
- (d) If a hearing officer requests an independent educational assessment as a part of a due process hearing, it shall be at public expense.
- (e) Whenever an IEE is obtained, the criteria under which the assessment is obtained, including the location of the assessment and the qualifications of the examiner(s), must be the same as the criteria that the local school system uses when it initiates an assessment.
- (f) The results of an IEE must be considered by the local school system, if the IEE meets local school system criteria, in any decision made with respect to the provisions of FAPE to the child and may be presented as evidence at a due process hearing regarding the child.

OPINION

Both the federal and state procedures for reimbursement of an IEE require, under the facts of this case, that the grandparents be reimbursed for the IEE performed by Ms. Blankenship.

The school's own records note that the grandparents disagreed with the evaluation of the student in November 2001 and that an IEE was obtained and considered. At no time has the school initiated a hearing to show its evaluation is appropriate.

In fact, the school's own records note that its November 2001 evaluation was not accurate due to the disabilities of the

student. Further, the school has not demonstrated in this due process hearing that the evaluation presented by the grandparents did not meet the local school system's evaluation criteria. Accordingly, it is hereby

ORDERED that the school shall reimburse the grandparents \$550.00 for the cost of the IEE by Jill Blankenship, dated February 5, 2002.

NOTICE

Any party aggrieved by this decision may appeal to the Chancery Court for Roane County, Tennessee, or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order.

In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.

Within sixty (60) days from the date of this Order (or thirty [30] days if the Board of Education chooses not to appeal), the local education agency shall render in writing to the District Team Leader and the Office of Compliance, Division of Special Education, a statement of compliance with the provision of this Order.

ENTER this 29th day of September, 2003.

MARILYN L. HUDSON
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Final Order has been served upon the following as set out below on this 29th day of September, 2003:

via facsimile and U.S. Mail
Grandparents of S. F.
Kingston, TN 37763

Charles W. Cagle & - via facsimile @ 615-259-1389 and U.S. Mail
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MARILYN L. HUDSON